IN THE HIGH COURT OF PUNJAB AND HARYANA AT

HANDIGARH.

C.W.P. No. 9999 of 2005

Date of Decision: 4.12.2006

Usha Jain

....Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Limited and others

...Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. Jagbir Malik, Advocate
for the petitioner.

Mr. Ajay Bhardwaj, Advocate,

for the respondents.

JUDGMENT

M.M. KUMAR, J.

The prayer made by the petitioner in the instant petition is for issuance of direction to the respondents to release to the petitioner payment of death-cum-retirement gratuity, leave encashment, family pension, ex-gratia grant and arrears of salary with 12% interest from the date of death of her husband. A further prayer has been made for giving appointment to the petitioner on

compassionate grounds in accordance with the provisions of the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003 (for brevity, 'the Rules')

Brief facts of the case are that the husband of the petitioner, namely, Shri Ram Niwas Jain was working as Junior Engineer (Field) with the respondents. On 12.3.2004, the husband of the petitioner expired in harness. The petitioner within two months thereafter approached the respondents for compassionate appointment of her son in accordance with the provisions of 2003 Rules. She has also completed all the documents for release of retiral benefits to her i.e. death-cum-retirement gratuity, family pension, leave encashment, arrears of salary and ex-gratia grant etc. It is appropriate to mention here that 2003 Rules were notified vide notification dated 28.2.2003 (P-1), whereby it was decided to give compassionate appointment to the dependents of deceased or missing government employees. The 2003 rules were further amended vide notification dated 10.2.2004 (P-2) which are known as 'the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees (Amendment) Rules, 2004 (for brevity, 'the 2004 Rules'). As per 2004 Rules, in cases where the appointment cannot be given to the dependent of any deceased employee due to delay then that family is also entitled for the financial assistance of Rs. 2,50,000/-. The respondent Nigam has adopted the aforementioned Rules. It is claimed that the petitioner visited the respondents many a times for grant of compassionate appointment to her son and for release of retiral benefits of her husband but not heed was paid. On 18.3.2005, she sent a

representation to the respondents which was followed by an advance notice dated 14.1.2005 (14.1.2006?) (P-3 & P-4 respectively). Aggrieved with the inaction on the part of the respondents, the petitioner has approached this Court by way of instant petition, which was filed on 5.7.2005.

In the written statement the stand taken by the respondents is that G.P.F. amount of Rs. 1,05,623/- has already been released to the petitioner on 19.10.2004 vide cheque No. 391413 (R-1/1). It has further been asserted that payment of GIS has also been made to the petitioner and son of the petitioner has been given appointment on the post of U.D.C. on compassionate ground, vide order dated 15.9.2005 (R-1/2). With regard to non-releasing of other retiral benefits the stand taken is that the husband of the petitioner remained on leave from 20.2.2001 to 6.3.2002 without leave and the petitioner was asked to submit the leave application for the said period. On receipt of application, the leave was sanctioned by the competent authority on 19.8.2005. It is claimed that the delay in release of retiral benefits has occurred due to the fact that the service book of the husband was incomplete and it took a lot of time to complete the same.

It is admitted case of the parties that no charge sheet or departmental inquiry etc. has been issued/initiated against the husband of the petitioner before his death.

After hearing learned counsel for the parties we find that the matter is not res-integra. In a catena of judgments, this court has dealt with the question whether pensionary benefits could be

withheld merely on the ground of issuance of a show cause notice before the date of retirement. The view taken by a Division Bench of this Court in the case of **Kirat Gopal v. Haryana Vidyut Parsaran Nigam Ltd. and others** (C.W.P. No.13039 of 1999 decided on 20.3.2000) had gone in favour of the petitioner. In the afore-mentioned judgment, reliance has been placed on the judgment of Hon'ble the Supreme Court in the case of **P.R. Nayak v. Union of India, AIR 1972 SC 554**, wherein it was laid down that the issuance of charge sheet for initiation of departmental inquiry is a sine qua non. Even otherwise under Rule 2.2(b) of Punjab Civil Services Rules, Volume II (as applicable to State of Haryana) the aforementioned legal position is absolutely clear. The explanation appended to Rule 2.2(b) in so far as is relevant to the present case reads as under:-

> "Explanation.- For the purpose of this rule-
>
> (1) departmental proceeding shall be deemed to have been instituted when the charges framed against the pensioner are issued to him or, if the officer has been placed under suspension from an earlier date, on such date; and....."

The aforementioned rule also incorporates the principle which is judicially recognized. No enquiry is deemed to be instituted without serving any charge sheet. Admittedly that has not been done in the present case because during the lifetime of the husband of the petitioner only a show cause notice was issued which cannot

constitute a basis for withholding pension or pensionary benefits.

In view of the above, on the basis of rules, principle and precedents we are of the view that the writ petition merits acceptance and the action of the respondents in withholding retiral benefits of gratuity and leave encashment is held to be illegal. Accordingly, a direction is issued to the respondents to release all the retiral benefits of the petitioner including gratuity and leave encashment without effecting any recovery on any count. The petitioner shall also be entitled to interest at the rate of 9% per annum from the date of retirement of her husband till the date of payment. The petitioner is also held entitled to payment of interest on all other delayed payments of retiral benefits from the date it became due till the date of payment at the rate of 9 % per annum.

Needful shall be done within a period of two months from the date a copy of the order is received by the respondents.

The petition stands disposed of in the above terms.

(M.M. KUMAR)

JUDGE

(M.M.S. BEDI)

December 4, 2006 **JUDGE**

Pkapoor